

ADA Testers And A Congressional Response

The Americans with Disabilities Act (ADA) has spawned a cottage industry of testers and their lawyers who travel from site to site looking for nonconformities. The ADA is a Federal civil rights act, creating the right to bring discrimination suits with regard to persons encountering real or perceived barriers preventing them from fully using facilities. When issues are found they file suit. As with any activity of this type, some of the suits are legitimate and some are not.

Florida and California are the two hottest spots in the Country for such suits.

One issue that exists in an ADA suit is the standing of the plaintiff to bring the case. Standing turns on whether one can show that he or she was harmed. Test ADA cases often bump up against the question of just how real is the discriminatory impact on the rights of the plaintiff.

Suits which are not legitimate often allege very technical deficiencies, sometimes in older facilities that are older than the

ADA itself. The age of the facility is not always a defense by itself, but there are times when the nature thereof makes corrections impracticable. Some ADA plaintiffs have only the most tenuous connection to the businesses they sue, and the alleged barriers that they challenge.

Even when suits are legitimate, the land or business owners are often required to spend thousands of dollars to defend themselves (even having to pay the plaintiff's attorney in some cases) and then may have to spend more to correct the deficiencies. The defendants often have no knowledge of the alleged violations until they are served with the complaint and summons. These costs are often an onerous burden and are non-productive. Only the attorneys benefit financially.

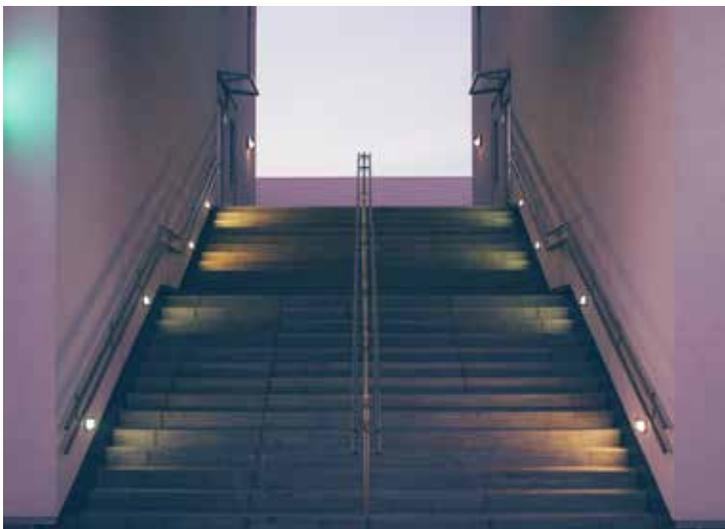
Recently a bill was introduced in the United States House of Representatives that, if passed as written, may remedy abuses of the ADA testers to some degree. A very important aspect of the proposed

law is a requirement that before a law suit can be filed the defendant must be given notice of the issues and be provided 90 days to correct them.

Within 15 days of the defendant's receipt of the notice, he or she must provide a notice to the public of the alleged violations and the steps being taken to correct them. A defendant who demonstrates a good faith effort to correct the violation but is not able to do so within the 90-day period provided is entitled to an additional 30 days to comply with the requirements.

There is no guaranty that the bill will ever become law. Some states, notably California, have taken steps themselves to deal with ADA tester abuse. Public pressure at the state and Federal level can improve the chance that ADA abuse can be limited or stopped.

Until the laws are changed, property and business owners remain vulnerable to law suits sprung on them without notice and without the opportunity to cure before filing.



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